51ST CONGRESS, 2d Session. } SENATE. { REPORT No. 2094.

IN THE SENATE OF THE UNITED STATES.

JANUARY 31, 1891.—Ordered to be printed.

Mr. DAVIS, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany S. 3896.]

The Committee on Military Affairs, to whom was referred the bill (S. 3896) pertaining to the settlement of military claims, having had the same under consideration, beg leave to report:

That the purpose of the bill is to direct the settlement of any claim of any officer or soldier against the United States for service rendered that has been adjusted at any time by the accounting officers upon an erroneous construction of law and prejudicial to the lawful rights of the officer or soldier. It was held in Major Smith's case (14 C. Cls. R., 114) that—

> According to the general practice of the Treasury, accounts are never closed; and in neither the legal nor mercantile sense is an officer's account with the Treasury ever "finally adjusted." This practice is general, has been invariable since the organization of the Treasury, and is applicable to all officers as well as to those intrusted with the disbursement of the public funds. Thus, when it was determined in 1872 that judicial salaries were not subject to the deduction of the income tax, the judges of the Supreme Court, like disbursing officers, were able to have their accounts at the Treasury restated, and the new balance which appeared owing to them (that is to say, the money which had been withheld from their salaries) paid over to them.

To the same effect was the cases of Emory and North (112 U. S. R., 512) regarded and followed in reopening a large number of claims which had been previously disallowed under erroneous construction of the act of July 19, 1848, and July, 1879, as well as the cases of the United States *vs.* Rockwell (120 U. S. R., 214), United States *vs.* Mullan (123 U. S. R., 186), United States *vs.* Baker (125 U. S. R., 646), United States *vs.* Cook (128 U. S. R., 254), United States *vs.* Strong (125 U. S. R., 656).

The position that "a payment of a part of a debt is a final settlement of the claim" was denied in the case of Dr. Thomas H. Baird *v.* The United States, who was a surgeon in the Army (Devereux report, p. 188), the court holding that—

> Upon any principle known to the law this position is wholly untenable. It is easy enough to declare *ex cathedra* that it was a final settlement; but it is extremely difficult to imagine, in the absence of all evidence, what reasons can be urged for holding that the payment of a sum of money is of itself a discharge of a debt of a larger amount. A plea of payment of a smaller sum in satisfaction of a larger is bad, even after verdict, and unless we set at defiance every principle of law we can not hold that one party to a contract, without the assent of the other, can discharge his debt by the payment of a smaller sum than the amount due.

More explicit was the language of the court in the Cape Anne Granite Company *vs.* The United States (20 C. Cls. R., p. 1):

> When the Government maintains its own construction of the contract, neither conceding nor compromising but compelling the other party to accept simply what it admits to be due, the transaction can not be up held as a settlement or compromise, though a receipt in full be given.

The bill under consideration, No. 3896 (Senate) was referred to the Secretary of the Treasury for examination, to which answer was made by the Secretary transmitting a report upon said bill made to him by the Second Auditor of the Treasury, and adding that he "inclosed a draft of a bill prepared by the Second Auditor as a substitute, which it is thought is not open to the objections urged againat Senate bill 3896."

The report of the Second Auditor referred to by the Secretary of the Treasury, and by him transmitted to the committee, states:

> I inclose for your consideration, and for transmittal to the Senate Military Committee, if it meet your approval, a draft of a bill which I think is not open to the objection urged against House bill 4625, with which Senate bill 3896, as far as it goes, is identical.

A copy of the bill prepared by the Second Auditor is as follows:

> A BILL to provide for the settlement of accounts and claims in certain cases.
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> *Be it enacted, etc.*, That the accounting officers of the Treasury be, and they are hereby, directed, on application being made by claimants or their heirs or legal representatives, to reopen accounts or claims settled at any time by said accounting officers, under a construction of law subsequently declared by the Supreme Court of the United States to be erroneous, and all such accounts shall be resettled and adjudicated in accordance with the law applicable thereto as constructed by said Supreme Court.

The committee report a substitute for Senate bill 3896 and recommend the passage of such substitute.

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